

## ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 455B.105, the Environmental Protection Commission hereby gives Notice of Intended Action to adopt new Chapter 17, “Compliance and Enforcement Procedures,” Iowa Administrative Code.

The purpose of this proposed chapter is to formalize the Department’s current compliance and enforcement options that may be used prior to, or in lieu of, assessing the administrative penalties specified in 567—Chapter 10. This chapter is intended to meet the Department’s responsibility to protect public health and the environment, while, at the same time, providing regulated entities and the public with transparency, clarity, consistency and fairness in addressing potential violations of Iowa’s environmental statutes and rules.

The Department remains committed to working openly, cooperatively and fairly with regulated entities to ensure that Iowa’s public health and air, water and land resources are protected and maintained. The Department achieves this mandate by issuing permits and adopting administrative rules, coaching for compliance, and duly enforcing these permits and rules. When violations do occur, the Department’s primary objective is for the responsible party to return to compliance quickly and to remain in compliance in the future.

This proposed chapter affirms the variety of compliance and enforcement options the Department may consider in responding to possible violations of environmental statutes, rules, permits, licenses, certifications, and plans. The Department has used these or similar procedures for many years, and this chapter simply formalizes this practice. The Department believes that this approach will result in increased and improved cooperation with the regulated community, prompt and effective resolution of violations, and reduced and prevented occurrences of environmental noncompliance.

Any person may make written suggestions or comments on the proposed rule making on or before 4:30 p.m. on Monday, April 23, 2012. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324; fax (515)242-5094; or by E-mail to [christine.paulson@dnr.iowa.gov](mailto:christine.paulson@dnr.iowa.gov).

A public hearing will be held on Monday, April 23, 2012, at 10 a.m. in the conference rooms at the Department’s Air Quality Bureau offices. The public may attend the meeting in person or by conference call. To access the meeting by conference call, please follow these instructions: Approximately five minutes prior to the start of the meeting, call (866)685-1580. When prompted, enter Conference Code 5152425196 followed by #.

All comments must be received no later than 4:30 p.m. on Monday, April 23, 2012.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 or by E-mail at [christine.paulson@dnr.iowa.gov](mailto:christine.paulson@dnr.iowa.gov) to advise of any specific needs.

After analysis and review of this rule making, no adverse impact on jobs exists. Further, the proposed rules promote collaboration between the business industry and the Department by ensuring compliance with rules and regulations within the least restrictive means possible. The rules will provide a benefit to regulated entities by affirming the variety of compliance and enforcement options that the Department may consider in responding to possible violations.

These rules are intended to implement Iowa Code section 455B.105.

The following amendment is proposed.

Adopt the following new 567—Chapter 17:

CHAPTER 17  
COMPLIANCE AND ENFORCEMENT PROCEDURES

**567—17.1(455B) Scope.** Prior to the initiation of administrative penalties pursuant to 567—Chapter 10, the department may consider other compliance and enforcement activities. This chapter sets out the possible compliance and enforcement procedures that the department may consider and utilize.

**567—17.2(455B) Basis.** While serious violations of rules, regulations and permits may result in administrative penalties, many activities by regulated entities may not rise to the level of requiring such formal enforcement action. In some instances, development of additional facts is appropriate, and in other instances, notification of the nature of the violation with an opportunity to correct the violation may be sufficient. The following compliance and enforcement procedures are available to the department and may be considered in those instances where it is necessary for the department to undertake a compliance or enforcement initiative:

**17.2(1) *Informal meeting.*** Department staff may attempt to resolve a potential violation or obtain additional information with an informal meeting. This meeting may be at the facility where the inspection took place. The discussion will usually focus on corrective actions to be taken, and in most instances, only department staff and the facility representative are present.

**17.2(2) *Letter of inquiry (LOI).*** If an informal meeting is not practical or is insufficient, the department may issue a letter of inquiry (LOI). The purpose of the LOI is to allow the regulated entity the opportunity to provide information that would be helpful for a determination of whether a violation has occurred. The letter should be labeled “Letter of Inquiry” and should, to the extent possible, seek specific information that will aid in the enforcement review.

**17.2(3) *Letter of noncompliance (LNC).*** If the information available to the department indicates a violation has taken place, the department may issue a letter of noncompliance (LNC). This letter is used to address violations of a less significant nature, such as a single incident of late reporting. An LNC will most often be used when no environmental harm or threat to human health or safety has occurred or is imminent, the regulated entity is not a repeat offender, the corrective action is not deemed an emergency, or the violation is considered insignificant. The letter is similar to a notice of violation but is captioned “Letter of Noncompliance” and is intended to provide the regulated entity with an opportunity to correct the identified deficiencies prior to further enforcement activity. In the LNC, the department also may suggest remedial measures and set a date for returning to compliance. The department will usually request a response from the regulated entity within a specific time period as to how the identified problems will be resolved. The LNC will typically be followed by a notice of violation if the regulated entity does not respond.

**17.2(4) *Notice of violation (NOV).*** When the other compliance and enforcement activities described in this chapter are not appropriate for the violation, or when the regulated entity has not returned to compliance, the department may issue a notice of violation (NOV). An NOV will most often be used when environmental harm or a threat to human health or safety has occurred or is imminent, the regulated entity is a repeat offender, the corrective action is deemed an emergency, or the violation is considered significant. The NOV identifies the nature of the violation and any corrective action being required of the regulated entity.

**567—17.3(455B) Option to respond.** Upon receiving a written inquiry, letter, or notice from the department as described in this chapter, the regulated entity has the option to respond to the department even if a response is not specifically requested. A letter of noncompliance (LNC) or notice of violation (NOV) will typically suggest a written response and corrective action from the regulated entity within a specified time period. In responding to an LNC or NOV, the regulated entity should, as appropriate, clearly outline any disagreements with the department’s LNC or NOV, provide any pertinent additional information, describe any current or planned corrective action, and provide a schedule for returning to compliance. The department will review written information submitted in response to the compliance

and enforcement procedures described in this chapter and will include this information in the file of record.

**567—17.4(455B) Department discretion.** At the department's sole discretion, the department may follow the compliance and enforcement procedures described in this chapter, commence with an LNC or NOV, or forego these options and commence with an administrative action (567—Chapter 10), or the department may request referral to the attorney general. The procedures in this chapter are intended to inform the regulated community of possible forms of compliance and enforcement procedures available to the department.

These rules are intended to implement Iowa Code section 455B.105.